UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL, INC., COMEDY PARTNERS, COUNTRY MUSIC TELEVISION, INC., PARAMOUNT PICTURES CORPORATION, and BLACK ENTERTAINMENT TELEVISION, LLC, Plaintiffs, vs. YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC., Defendants.	NO. 07-CV-2203
THE FOOTBALL ASSOCIATION PREMIER LEAGUE LIMITED, BOURNE CO., et al., on behalf of themselves and all others similarly situated, Plaintiffs, vs. YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC., Defendants.	NO. 07-CV-3582

VIDEOTAPED DEPOSITION OF CHRIS MAXCY
SAN FRANCISCO, CALIFORNIA
THURSDAY, AUGUST 28, 2008

BY: ANDREA M. IGNACIO HOWARD, CSR, RPR, CLR
CSR LICENSE NO. 9830
JOB NO. 15485

21b70149-76c5-4fc4-becb-92d0fd08eedd

AUGUST 28, 2008

10:04 a.m.

VIDEOTAPED DEPOSITION OF CHRIS MAXCY, SHEARMAN & STERLING, 525 Market Street, San Francisco, California, pursuant to notice, before ANDREA M. IGNACIO HOWARD, CLR, RPR, CSR License No. 9830.

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A P P E A R A N C E S (Continued.)

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LOU MEADOWS, Videographer

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10:53:31 A Warner Music Group.

10:53:38 Q I believe you testified YouTube seeks to generate revenue from advertising; is that fair?

10:53:43 MR. MANCINI: Objection; asked and answered.

10:53:46 THE WITNESS: Yes.

10:53:47 MR. SHAFTEL: Q. And when you began in December '05 or early '06, where was YouTube displaying advertising on its site?

10:54:16 MR. MANCINI: Objection to form.

10:54:17 THE WITNESS: I don't recall the specifics. I think you'd have to talk to somebody else about that, but I do recall that we had advertising on the home page.

10:54:34 MR. SHAFTEL: Q. Do you recall if there was advertising anywhere else?

10:54:44 MR. MANCINI: Same objection.

10:54:45 THE WITNESS: At that time, I can't recall exactly where it was, so I -- I don't want to speculate.

10:54:52 MR. SHAFTEL: Q. Do you recall there came a point in time when there was advertising beyond the home page?

10:54:57 A Yes.

10:54:57 Q When? When was that?

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10:54:59 A I don't recall exact dates.

10:55:00 Q Where -- can -- can you approximate a time frame when you can first recall advertising somewhere other than the home page?

10:55:09 MR. MANCINI: Objection to form.

10:55:10 THE WITNESS: I can't recall specific dates, no.

10:55:11 MR. SHAFTEL: Q. What do you mean by the "home page" by the way?

10:55:13 A The youtube.com front page.

10:55:14 Q Well, you know today, am I correct, that there's advertising beyond the home page?

10:55:16 A That's correct.

10:55:19 Q Now, does the home page display any content that has been provided by a third party to YouTube?

10:55:23 MR. MANCINI: Objection to form.

10:55:25 THE WITNESS: All of the content that we have on our site has been provided by a third-party, uploaders.

10:55:25 MR. SHAFTEL: Q. Well, you described a home page as a page, in essence, which said YouTube.com or something like that.

10:55:34 A Right.

10:55:43 Q So what I'm trying to distinguish is on that,

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the status of their approval, whether they had approved or not approved.

Q And after a contract is executed, does it continue to reside within the Simba system?

A To my understanding, yes.

Q Are there any fields for comments within the Simba system?

A Yes.

Q So somebody, for example, who's reviewing a potential agreement that is captured within Simba is able to relate comments that she or he has about the proposed agreement?

A That's correct.

Q And is this something which is accessible from your computer in your office?

A Yes.

Q Okay. Let me mark as Exhibit 21 the next document, 10746.

(Document marked Maxcy Exhibit 21 for identification.)

MR. SHAFTEL: Q. Let me know when you've had a chance to review it, Mr. Maxcy.

A Okay.

Q The top -- the only e-mail on this page,

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17:10:17 you're writing to Mr. Eun, and you're providing a
17:10:20 summary of apparently what you discussed on, quote,
17:10:28 the "H.264 encoding question." What are you referring
17:10:31 to by "H.264 encoding"?
17:10:36 A This is an e-mail describing how YouTube
17:10:46 encodes video. So there's different -- I have a very
17:10:52 basic understanding of this, but apparently there are
17:10:55 different formats that you can convert a file into
17:10:58 when it's been uploaded to YouTube, and H.264 is a
17:11:05 format that is compatible with viewing through mobile
17:11:11 devices and other devices.
17:11:12 Q So this process relates to YouTube's
17:11:19 syndication of content to third parties?
17:11:23 MR. MANCINI: Objection to form.
17:11:24 THE WITNESS: Could you rephrase?
17:11:25 MR. SHAFTEL: Yeah.
17:11:26 Q Am I correct that YouTube engages in the
17:11:30 H.264 encoding in order to then syndicate the content
17:11:35 to third parties?
17:11:41 A That is one reason. As far as I'm aware,
17:11:46 H.264 is also a higher quality format, even when video
17:11:50 is being delivered through a web page. And again,
17:11:54 from what I've been told, this was something that was
17:11:59 done to improve the viewing experience, not just on

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17:12:03 mobile and devices, but on the YouTube website.

17:12:09 Q So the content undergoes H.264 encoding even

17:12:19 when the content stays on the YouTube site, it is not

17:12:25 distributed or syndicated to third parties?

17:12:28 MR. MANCINI: Objection to the extent that

17:12:29 this witness has any knowledge of that technical --

17:12:32 THE WITNESS: I don't know the answer to

17:12:33 that.

17:12:33 MR. SHAFTEL: Q. Is that your understanding?

17:12:35 A I -- I don't want to speculate. I think the

17:12:39 best person to talk to would be the engineering team.

17:12:47 Q In your summary here, you refer to -- to

17:12:52 date, and this is August '07, "YouTube engineering

17:12:57 team has re-encoded approximately 30,000 of the top

17:13:00 watched videos on YouTube."

17:13:02 A Yes.

17:13:02 Q How was that 30,000 selected?

17:13:13 A I don't know.

17:13:13 Q Do you know who selected it? What person or

17:13:19 group of people?

17:13:22 A I don't. I think that the engineering team

17:13:24 would probably be the best to tell you. The way I

17:13:27 read this, it was probably an algorithm based on the

17:13:33 top viewed videos.

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17:13:34 Q Do you know how much of YouTube's content has been H.264 encoded today?

17:13:40 A It's my understanding that the entire catalog at this point has been converted.

17:13:44 Q Where does that -- where does that process take place?

17:13:48 A I have no idea.

17:13:49 Q There's also a reference in your summary to a WAP, in caps, site. What is that?

17:13:57 A That's an acronym standing for Wireless Access Protocol or a mobile site, a mobile website that would be viewable on a mobile device.

17:14:00 MR. SHAFTEL: I'm told we need to change the -- the tape.

17:14:05 THE VIDEOGRAPHER: Okay. This marks the end of videotape number three. Off the record.

17:14:10 The time is 5:14 p.m.

17:14:13 (Recess taken.)

17:14:24 THE VIDEOGRAPHER: On the record. This marks the beginning of videotape number four in the deposition of Chris Maxcy on August 28, 2008. The time is 5:26 p.m.

17:14:26 Please continue.

17:14:28 MR. SHAFTEL: Q. Sticking with Exhibit 21,

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17:26:54 Mr. Maxcy, before the break for the video change, we
17:26:59 were talking about the re-encoding by August of '07 of
17:27:06 approximately 30,000 of the top watched videos on
17:27:11 YouTube, and you had mentioned that the engineers may
17:27:14 have applied some algorithm you were not -- you were
17:27:17 not sure of, I think was your testimony.
17:27:19 Were you involved or are you aware of what
17:27:23 directions anybody in the engineering department was
17:27:26 given in terms of selecting the 30,000?
17:27:31 MR. MANCINI: Objection to form.
17:27:33 THE WITNESS: No, I wasn't aware of how they
17:27:37 determined this or the directions they were given.
17:27:40 MR. SHAFTEL: Q. With regard to any of the
17:27:45 content syndicated by YouTube to third parties, are
17:27:50 you aware of any efforts by YouTube to either review
17:27:58 or select only a portion of content to provide to the
17:28:03 third party?
17:28:05 MR. MANCINI: Objection to form.
17:28:06 THE WITNESS: Could you be more specific?
17:28:11 MR. SHAFTEL: Q. In the deals where YouTube
17:28:14 is syndicating content, are you aware of any instances
17:28:17 where the third party received only a selection of the
17:28:26 content that had been encoded for transmittal?
17:28:33 MR. MANCINI: Objection to form.

17:28:34 THE WITNESS: Yes.

17:28:41 MR. SHAFTEL: Q. What do you recall about those instances? What was the selection criteria?

17:28:48 A We --

17:28:49 MR. MANCINI: Objection to form; compound question.

17:28:52 THE WITNESS: We had a partnership, or we have a partnership with Verizon VCAST in which we made available videos that were featured on YouTube's website for the VCAST platform. So any video that had been featured by YouTube on its front page was available for display on VCAST.

17:29:21 MR. SHAFTEL: Q. And other YouTube videos, meaning videos displayed on YouTube, were not accessible or available on the Verizon VCAST?

17:29:30 A That's correct.

17:29:30 Q Did you have discussions with Verizon about that restriction?

17:29:37 A Yes.

17:29:37 Q And why did Verizon want that restriction?

17:29:42 A Verizon was concerned about the appropriateness of the content. More specifically, they were worried about pornography, child pornography, or illegal acts.

17:29:58 Q And when you say that it was featured content
17:30:04 that was accessible or available on Verizon VCAST, did
17:30:10 YouTube personnel play a role in selecting that
17:30:13 content to put on the home page?
17:30:15 MR. MANCINI: Objection to form.
17:30:16 THE WITNESS: Yes. The YouTube site has a
17:30:21 functionality that allows users to notify YouTube of
17:30:29 content that they find interesting that says "Please
17:30:34 feature that content," and that content is then sent
17:30:39 to YouTube personnel, editorial personnel, for review
17:30:42 and consideration for featuring on the front page of
17:30:45 YouTube.
17:30:46 MR. SHAFTEL: Q. And do the YouTube
17:30:47 editorial personnel review for copyright issues?
17:30:51 A Not to my knowledge, no.
17:30:52 Q Did you speak to Verizon VCAST about this
17:30:58 limitation or the scope of content that would be
17:31:01 supplied to Verizon?
17:31:03 A Could you be more specific?
17:31:08 Q Yeah.
17:31:08 Did you yourself have a role in the
17:31:10 discussions with Verizon VCAST about the scope of
17:31:15 content being limited to featured content?
17:31:17 A Tangentially, I didn't complete the Verizon

17:31:20 deal. Someone on my team did.

17:31:22 Q Who?

17:31:23 A Kelly Liang, L-I-A-N-G.

17:31:26 Q You said you didn't complete the deal. Were you yourself involved in any discussions with Verizon about the scope of content?

17:31:34

17:31:36 A Yes.

17:31:36 Q Who did you speak with at Verizon?

17:31:42 A I don't recall all the people, but there was one individual named Jennifer Byrne at Verizon who is a business development person there.

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17:31:52 Q She was your principal contact there?

17:31:55 A Yes.

17:31:55 Q Were there any discussions about copyright issues with Verizon that you were party to?

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17:32:04 A I believe so, yes.

17:32:05 Q What do you recall about those?

17:32:10 A Honestly, I don't recall the details. I do recall that there were conversations about copyright.

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17:32:15 Q And Verizon expressed concerns about having unauthorized copyrighted content displayed on Verizon VCAST?

17:32:19

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17:32:27 A Yes.

17:32:27 Q And did that factor into other interests as